REMARKS

Objections to the specification

The Abstract has been objected to, presumably because it includes the language "is disclosed." Applicant has amended the Abstract so that this offending language is no longer present.

Claim 1

Claim 1 has been rejected under 35 USC 102(e) as being anticipated by Helferich (6,826,407). Applicant respectfully submits that claim 1 is patentable over Helferich.

The sum total of the explanation of the rejection of claim 1 over Helferich in the Office Action is as follows. The Examiner has recited all the claim limitations of claim 1, and then quotes column 3, line 19, through column 4, line 6 of Helferich – also unhelpfully referring Applicant to the "discussion beginning at column 4, line 46." (See office action, pp. 4-5.) Such a rejection very much fails the responsibility of the Examiner to furnish a *prima facie* case of anticipation. The Examiner is aware that "[i]t is by now well settled that the burden of establishing a *prima facie* case of anticipation resides with the Patent and Trademark Office." In re Skinner, 2 USPQ2d 1788 (BPAI 1986). Under 35 USC 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim. In re Bond, 15 USPQ2d 1566 (Fed. Cir. 1990). Most significantly, the Federal Circuit expects the Patent and Trademark Office's "anticipation analysis [to] be conducted on a limitation by limitation basis, with specific fact findings for each contested limitation and *satisfactory explanations* for such findings." Gechter v. Davidson, 43 USPQ2d 1030 (Fed. Cir. 1997) (Emphasis added). "Claim construction must also be explicit . . . ." *Id.*

Applicant respectfully but strongly asserts that the Examiner has failed to provide a *prima facie* case of anticipation to which Applicant can properly respond. The Examiner in the Office

Action has simply delineated the limitations of claim 1 and then summarily without any analysis or explanation concludes that Helferich anticipates these limitations in by quoting from Helferich verbatim, without providing any explanation as to which elements in Helferich correspond to which elements or limitations of the invention. Helferich is a complex reference, and Applicant can only guess which elements the Examiner intends to correspond with which limitations of claim 1.

However, determining which elements of Helferich correspond to which limitations of the claims is not Applicant's obligation – it is the Examiner's obligation to provide an anticipation analysis on a limitation by limitation basis, as indicated in the Gechter decision, to warrant a *prima facie* case of anticipation. Indeed, 37 CFR 1.106(b) notes that "[w]hen a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated *as nearly as practicable*." (Emphasis added) However, the Examiner has not designated which parts of Helferich correspond to the various limitations and elements of the claims. The Examiner has just stated that a large excerpt of Helferich disclose every limitation of claim 1. The Examiner has made no attempt at claim construction either.

Therefore, Applicant strongly submits that the Examiner has failed to provide a *prima facie* case of anticipation of the claims in questions as to Helferich. The completely conclusory nature of the Examiner's rejection contains no analysis, and no indication where in Helferich the Examiner finds the limitations and elements of the claimed invention (indeed, as to the "discussion beginning at column 4, line 46," does the Examiner really just refer to the detailed description of Helferich in its entirety?). The Examiner should surely recognize that this rejection would easily not be upheld on appeal.

Claim 1 is limited to a system including an "operating system." Applicant can find no indication of an "operating system" in Helferich. Claim 1 is limited to "an application program running on the operating system." Applicant can find no "program" in Helferich, let alone an "application program," and let alone a "program running on the operating system." Claim 1 is

limited to "an audio or video program running on the operating system." Again, Applicant can find no "program" in Helferich, let alone "an audio or video program," and let alone "an audio or video program running on the operating system."

Furthermore, claim 1 is limited to the audio or video program being "separate from but integrated with the application program, such that the application program is unaware that the audio or video program has been integrated therewith." Applicant has reviewed Helferich in detail, and can find no semblance of disclosure in Helferich that corresponds to this limitation of claim 1. Claim 1 is limited to "a user of the application program interact[ing] with the audio or video program as though the audio or video program were part of the application program." Applicant has review Helferich in detail in relation to this limitation as well, and can find no semblance of disclosure in Helferich that corresponds to this limitation of claim 1.

For these reasons, Applicant strongly submits that the Examiner has not provided a *prima facie* case of anticipation of claim 1, such that claim 1 is patentable over Helferich.

Claims 2 and 7-11

Claims 2 and 7-11 have been rejected under 35 USC 102 as being anticipated by Helferich. Claims 2 and 7-11 are dependent claims, depending from claim 1, and therefore are patentable at least because they depend from a patentable base independent claim, claim 1.

Claim 3

Claim 3 has been rejected under 35 USC 102 as being anticipated by Helferich. Claim 3 is a dependent claim, ultimately depending from claim 1, and therefore is patentable at least because it depends from a patentable base independent claim, claim 1.

Applicant submits, however, that claim 3 is independently patentable over Helferich, irrespective of the patentability of claim 1. Claim 3 is limited to the audio or video program being integrated with the application program "by subclassing into a window of the application

program." The Examiner has unhelpfully referred Applicant to FIGs. 7-8 of Helferich and their associated text, without any explanation as to how these figures and text describe an audio or video program being integrated with the application program specifically by the audio or video program "subclassing into a window of the application program." Indeed, Applicant has reviewed Helferich in detail, and can find no disclosure of the terminology "subclassing," let alone any discussion that corresponds to what subclassing means to those of ordinary skill within the art.

Therefore, for at least these reasons, the Examiner has not provided a *prima facie* case of anticipation of claim 3, such that claim 3 is patentable over Helferich.

Claim 4

Claim 4 has been rejected under 35 USC 102 as being anticipated by Helferich. Claim 3 is a dependent claim, ultimately depending from claim 1, and therefore is patentable at least because it depends from a patentable base independent claim, claim 1.

Applicant submits, however, that claim 4 is independently patentable over Helferich, irrespective of the patentability of claim 1. Claim 4 is limited to the audio or video program being integrated with the application program "by hooking into a window of the application program." The Examiner has unhelpfully referred Applicant to FIGs. 7-8 of Helferich and their associated text, without any explanation as to how these figures and text describe an audio or video program being integrated with the application program specifically by the audio or video program "hooking into a window of the application program." Indeed, Applicant has reviewed Helferich in detail, and can find no disclosure of the terminology "hooking," let alone any discussion that corresponds to what hooking means to those of ordinary skill within the art.

Therefore, for at least these reasons, the Examiner has not provided a *prima facie* case of anticipation of claim 4, such that claim 4 is patentable over Helferich.

Claim 5

Claim 5 has been rejected under 35 USC 102 as being anticipated by Helferich. Claim 3 is a dependent claim, ultimately depending from claim 1, and therefore is patentable at least because it depends from a patentable base independent claim, claim 1.

Applicant submits, however, that claim 5 is independently patentable over Helferich, irrespective of the patentability of claim 1. Claim 5 is limited to the audio or video program being integrated with the application program "by employing a customization mechanism of the application program." The Examiner has unhelpfully referred Applicant to FIGs. 7-8 of Helferich and their associated text, without any explanation as to how these figures and text describe an audio or video program being integrated with the application program specifically by the audio or video program "employing a customization mechanism of the application program." Indeed, Applicant has reviewed Helferich in detail, and can find no disclosure of an audio or video program employing an application program's customization mechanism. Indeed, Applicant can find no disclosure of a customization mechanism at all.

Therefore, for at least these reasons, the Examiner has not provided a *prima facie* case of anticipation of claim 5, such that claim 5 is patentable over Helferich.

Claim 6

Claim 6 has been rejected under 35 USC 102 as being anticipated by Helferich. Claim 3 is a dependent claim, ultimately depending from claim 1, and therefore is patentable at least because it depends from a patentable base independent claim, claim 1.

Applicant submits, however, that claim 6 is independently patentable over Helferich, irrespective of the patentability of claim 1. Claim 6 is limited to the audio or video program being integrated with the application program "by employing application programming interfaces (API's) of the application program." The Examiner has unhelpfully referred Applicant to FIGs. 7-8 of Helferich and their associated text, without any explanation as to how these figures and text

describe an audio or video program being integrated with the application program specifically by the audio or video program "employing application programming interfaces (API's) of the application program." Indeed, Applicant has reviewed Helferich in detail, and can find no disclosure of an audio or video program employing an application program's application programming interfaces (API's). Indeed, Applicant can find no disclosure of application programming interfaces (API's) at all.

Therefore, for at least these reasons, the Examiner has not provided a *prima facie* case of anticipation of claim 6, such that claim 6 is patentable over Helferich.

Claims 12 and 19

Claims 12 and 19, which are independent claims, have been rejected under 35 USC 102(e) as being anticipated by Helferich. Applicant respectfully submits that claims 12 and 19 are patentable over Helferich.

The sum total of the explanation of the rejection of claims 12 and 19 over Helferich in the Office Action is as again follows. The Examiner has recited all the claim limitations of claim 12 in particular, and then quotes column 3, line 19, through column 4, line 6 of Helferich – also unhelpfully referring Applicant to the "discussion beginning at column 4, line 46." (See office action, pp. 8-9.) Such a rejection very much fails the responsibility of the Examiner to furnish a *prima facie* case of anticipation. The Examiner is aware that "[i]t is by now well settled that the burden of establishing a *prima facie* case of anticipation resides with the Patent and Trademark Office." In re Skinner, 2 USPQ2d 1788 (BPAI 1986). Under 35 USC 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim. In re Bond, 15 USPQ2d 1566 (Fed. Cir. 1990). Most significantly, the Federal Circuit expects the Patent and Trademark Office's "anticipation analysis [to] be conducted on a limitation by limitation basis, with specific fact findings for each contested limitation and *satisfactory*

explanations for such findings." Gechter v. Davidson, 43 USPQ2d 1030 (Fed. Cir. 1997) (Emphasis added). "Claim construction must also be explicit . . . ." *Id.*

Applicant respectfully but strongly asserts that the Examiner has failed to provide a *prima facie* case of anticipation to which Applicant can properly respond.. The Examiner in the Office Action has simply delineated the limitations of claim 12 in particular and then summarily without any analysis or explanation concludes that Helferich anticipates these limitations in by quoting from Helferich verbatim, without providing any explanation as to which elements in Helferich correspond to which elements or limitations of the invention. Helferich is a complex reference, and Applicant can only guess which elements the Examiner intends to correspond with which limitations of claim 1.

However, determining which elements of Helferich correspond to which limitations of the claims is not Applicant's obligation – it is the Examiner's obligation to provide an anticipation analysis on a limitation by limitation basis, as indicated in the Gechter decision, to warrant a *prima facie* case of anticipation. Indeed, 37 CFR 1.106(b) notes that "[w]hen a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated *as nearly as practicable*." (Emphasis added) However, the Examiner has not designated which parts of Helferich correspond to the various limitations and elements of the claims. The Examiner has just stated that a large excerpt of Helferich disclose every limitation of claim 12 in particular. The Examiner has made no attempt at claim construction either.

Therefore, Applicant strongly submits that the Examiner has failed to provide a *prima facie* case of anticipation of the claims in questions as to Helferich. The completely conclusory nature of the Examiner's rejection contains no analysis, and no indication where in Helferich the Examiner finds the limitations and elements of the claimed invention (indeed, as to the "discussion beginning at column 4, line 46," does the Examiner really just refer to the detailed description of Helferich in its entirety?). The Examiner should surely recognize that this rejection would easily not be upheld on appeal.

Claim 12 is discussed now as representative of both claims 12 and 19. Claim 12 is limited to a method. The method "detect[s] when an event related to a predetermined application program occurs." Applicant can find no "program" in Helferich, let alone an "application program." The method, "in response to detecting when the event has occurred," specifically performs the following. In particular, "an audio or video program present[s] one or more audio or video controls for use in conjunction with the predetermined application program." Again, Applicant can find no "program" in Helferich, let alone "an audio or video program."

Furthermore, claim 12 is limited to the audio or video program being "separate from the predetermined application program," but where "the audio or video program . . . is integrated with the predetermined application program." Applicant has reviewed Helferich in detail, and can find no semblance of disclosure in Helferich that corresponds to these limitations of claim 12. Applicant has review Helferich in detail in relation to this limitation as well, and can find no semblance of disclosure in Helferich that corresponds to this limitation of claim 12.

For these reasons, Applicant strongly submits that the Examiner has not provided a *prima facie* case of anticipation of claims 12 and 19, such that claims 12 and 19 are patentable over Helferich.

Claims 13 and 20

Claims 13 and 20 have been rejected under 35 USC 102 as being anticipated by Helferich. Claims 13 and 20 are dependent claims, depending from claims 12 and 19, respectively, and therefore are patentable at least because they depend from patentable base independent claims, claims 12 and 19.

Claim 14

Claim 14 has been rejected under 35 USC 102 as being anticipated by Helferich. Claim 14 is a dependent claim, ultimately depending from claim 12, and therefore is patentable at least because it depends from a patentable base independent claim, claim 12.

Applicant submits, however, that claim 14 is independently patentable over Helferich, irrespective of the patentability of claim 12. Claim 14 is limited to creating an audio or video program window "through an operating system." Applicant has reviewed Helferich in detail, and can find no reference within Helferich to any sort of "operating system," let alone the creation of an audio or video program window through an operating system.

Therefore, for at least these reasons, the Examiner has not provided a *prima facie* case of anticipation of claim 14, such that claim 14 is patentable over Helferich.

Claim 15

Claim 15 has been rejected under 35 USC 102 as being anticipated by Helferich. Claim 15 is a dependent claim, ultimately depending from claim 12, and therefore is patentable at least because it depends from a patentable base independent claim, claim 12.

Applicant submits, however, that claim 15 is independently patentable over Helferich, irrespective of the patentability of claim 15. Claim 15 is limited to presenting the one or more audio or video controls by "subclassing into a window of the predetermined application program." The Examiner has unhelpfully referred Applicant to FIGs. 7-8 of Helferich and their associated text, without any explanation as to how these figures and text describe presenting audio or video controls specifically by "subclassing into a window of the predetermined application program." Indeed, Applicant has reviewed Helferich in detail, and can find no disclosure of the terminology "subclassing," let alone any discussion that corresponds to what subclassing means to those of ordinary skill within the art.

Therefore, for at least these reasons, the Examiner has not provided a *prima facie* case of anticipation of claim 15, such that claim 15 is patentable over Helferich.

Claim 16

Claim 16 has been rejected under 35 USC 102 as being anticipated by Helferich. Claim 16 is a dependent claim, ultimately depending from claim 12, and therefore is patentable at least because it depends from a patentable base independent claim, claim 12.

Applicant submits, however, that claim 16 is independently patentable over Helferich, irrespective of the patentability of claim 16. Claim 16 is limited to presenting the one or more audio or video controls by "hooking into a window of the predetermined application program." The Examiner has unhelpfully referred Applicant to FIGs. 7-8 of Helferich and their associated text, without any explanation as to how these figures and text describe presenting audio or video controls specifically by "hooking into a window of the predetermined application program." Indeed, Applicant has reviewed Helferich in detail, and can find no disclosure of the terminology "hooking," let alone any discussion that corresponds to what hooking means to those of ordinary skill within the art.

Therefore, for at least these reasons, the Examiner has not provided a *prima facie* case of anticipation of claim 16, such that claim 16 is patentable over Helferich.

Claim 17

Claim 17 has been rejected under 35 USC 102 as being anticipated by Helferich. Claim 17 is a dependent claim, ultimately depending from claim 12, and therefore is patentable at least because it depends from a patentable base independent claim, claim 12.

Applicant submits, however, that claim 17 is independently patentable over Helferich, irrespective of the patentability of claim 17. Claim 17 is limited to presenting the one or more audio or video controls by "employing a customization mechanism of the predetermined

application program." The Examiner has unhelpfully referred Applicant to FIGs. 7-8 of Helferich and their associated text, without any explanation as to how these figures and text describe presenting audio or video controls specifically by "employing a customization mechanism of the predetermined application program." Indeed, Applicant has reviewed Helferich in detail, and can find no disclosure of an application program having a customization mechanism in this respect. Indeed, Applicant can find no disclosure of any type of customization mechanism at all.

Therefore, for at least these reasons, the Examiner has not provided a *prima facie* case of anticipation of claim 17, such that claim 17 is patentable over Helferich.

Claim 18

Claim 18 has been rejected under 35 USC 102 as being anticipated by Helferich. Claim 18 is a dependent claim, ultimately depending from claim 12, and therefore is patentable at least because it depends from a patentable base independent claim, claim 12.

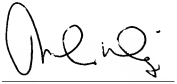
Applicant submits, however, that claim 18 is independently patentable over Helferich, irrespective of the patentability of claim 18. Claim 18 is limited to presenting the one or more audio or video controls by "employing application programming interfaces (API's) of the predetermined application program." The Examiner has unhelpfully referred Applicant to FIGs. 7-8 of Helferich and their associated text, without any explanation as to how these figures and text describe presenting audio or video controls specifically by "employing application programming interfaces (API's) of the predetermined application program." Indeed, Applicant has reviewed Helferich in detail, and can find no disclosure of the presentation of audio or video programs by using application programming interfaces (API's) of an application program. Indeed, Applicant can find no disclosure of application programming interfaces (API's) at all.

Therefore, for at least these reasons, the Examiner has not provided a *prima facie* case of anticipation of claim 18, such that claim 18 is patentable over Helferich.

Conclusion

Applicant has made a diligent effort to place the pending claims in condition for allowance, and request that they so be allowed. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Michael Dryja, Applicant's Attorney, at 425-427-5094, so that such issues may be resolved as expeditiously as possible. For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited. Applicant strongly contends that the Examiner's rejection of the claimed invention would not be sustained on appeal.

Respectfully Submitted,



2-27-2008
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